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MULTIMEDIA ENTERTAINMENT

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Elizabeth A. Allen
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By Overnight Mail

December 16, 1993

Acting Secretary William Caton
Federal Communications Commission
1919 M Street
Washington, DC 20554

Re: FCC Notice of Inquiry Concerning The Reimposition of Commercial Limits on Television Broadcast Stations -- MM Docket 93-254

Dear Acting Secretary Caton:

It is the belief of Multimedia Entertainment that current incentives ensure a kind and quality of programming that is both sensitive and responsive to community needs. Furthermore, we maintain that the current administration of advertising time provides licensees with sufficient incentives to become and remain aware of the specific problems and needs of the communities they serve.

Ongoing deregulation of the communications industry strongly reflects the vitality and importance of market incentives. These incentives function as a means of achieving regulatory objectives, and, at the same time, provide broadcasters with both flexibility and increased freedom to meet and respond to the rapid and continuous changes that occur within their communities. Licensees retain the obligation to provide programming that is responsive to issues of community concern. Existing regulatory procedures continue to function as effective tools, while permitting the gradual elimination of burdensome and frequently unnecessary regulations.

It is our sense that routine review of current programming is unnecessary, because the networks themselves are sufficiently vigilant in monitoring both the programming they present and the kind and quality of the advertising that supports such programming. This contention is supported by both the *Paperwork Reduction Act* and President Clinton's "Re-inventing Government" initiative. As the video industry is effectively regulating itself at this time, we see no current need for the FCC to create further regulatory restrictions. We would further regard additional regulation of content and manner of presentation as a cumbersome and unnecessary infringement on the editorial discretion of the broadcasting industry itself.

We have reviewed several studies regarding the effects of marketplace forces on network programming. From these studies, we infer that newer video technologies, for example, Subscription Services, Multipoint Distribution, Satellite Master Antenna Television, Direct Broadcast Satellite, Multichannel MDS, and Instructional Television Fixed Service Stations, have become significant components in the media marketplace. It is clear to us that although these services remain free of FCC regulation, they, too, are responsive to community influences, and for the most part, produce varied programming that is both responsible and responsive to community needs.

Projected changes in technology that will bring 500 video channels to consumers in the near future will clearly create an intensely competitive marketplace. In view of these rapidly increasing levels of competition, we believe that licensees should be given maximum flexibility, so that they will be able to respond to the changing realities of the marketplace. This increased flexibility will permit them to alter the mix of programming and commercial formatting in order to remain viable and competitive. In the light of these ongoing changes, we regard not only additional regulation of the broadcasting industry, but also existing regulations to be burdensome and unnecessary.

We further believe that the public-interest standard invites reference to First Amendment principles. The lack of a direct nexus between quantitative programming and licensee performance increases our First Amendment concerns. The continued existence of commercialization guidelines within the context of rapidly evolving video services could, at some future time, constitute an unacceptable level of infringement. For example, we are concerned that potential guidelines could infringe on the editorial discretion of broadcasters by imposing mandatory levels on non-entertainment programming.

Of additional concern to us is the current operational definition of licensees' programming obligations in strictly quantitative terms. This focus represents, in our view, a serious distortion of the regulatory relationship. Mere quantities of specific programming cannot and will not fulfill the obligations of the networks to the communities they serve. Both the Commission itself and the Courts have repeatedly recognized that quantity, in and of itself, is not an accurate means of assessing the effectiveness of a licensee's overall programming responsiveness. Clearly, sensitivity and responsiveness to community needs provides a more accurate and significant measure of broadcasting efficacy than simplistic quantitative measures. It is therefore our contention that existing quantitative norms have little impact on each broadcaster's obligation to respond to their community by providing an appropriate programmatic mix. To suggest that these obligations can be fulfilled in strictly quantitative terms is, in our opinion, a misapprehension of traditional programming responsibilities. In view of the foregoing, it is clear to us that quantitative regulatory guidelines are both inappropriate and ineffective, and that they should therefore be eliminated.

Within the complex context of the current video marketplace, we remain convinced that non-entertainment programming is vital to the creation of an informed public. Moreover, such programming is an important component of democracy. Even though it may not command as large an audience as some other genres, it is important for this type of programming to retain financial viability, and for all of us to ensure that it remains available. Logically, this narrower audience generates less income. Therefore, in order to support programming that will remain responsive to issues of concern within a given community, additional advertising time may well prove necessary. Such increased revenues would enable licensees to fulfill their obligations to their communities by continuing to provide programming that contributes to the ongoing discussion of relevant issues.

Commercial practices of the networks have been shaped by the desire to avoid the abuses of overcommercialization, while, at the same time, avoiding the adoption of overly rigid quantitative standards. We believe that such a balance is necessary in order for networks to maintain a flexible approach to community-responsive programming, as well as to sustaining their marketplace viability. We reiterate our conviction that the marketplace itself will determine appropriate commercial levels for broadcasters, impacting not only the number, but also the length, of advertising segments. Accordingly, we believe that no ban or adverse consequence should be placed on telecast of commercials or program-length commercials.

We remain concerned that continued or increased regulation of advertising may interfere with the growth of the video market, in addition to having a detrimental effect upon First Amendment issues. This would directly violate the protections already granted by the Supreme Court regarding the regulations of commercials. One concern, that of advertising "clutter", or the clustering of too many commercials together, will be regulated by viewers themselves, who will not tolerate advertising they consider to be excessive.

To conclude, we firmly believe that competition, rather than enforcement, will effectively regulate levels of broadcast commercialization. Government regulation of the content of television communications is not only unnecessary but also an unacceptable intrusion on speech as well as on the rights of viewers and broadcasters to formulate their own choices.

Very truly yours,

Elizabeth A. Allen

EAA:pjr